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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,722	09/28/2000	Donald L. Wilson	12548US02	2793

7590 02/02/2004

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Chicago, IL 60661

EXAMINER
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GRIER, LAURA A

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 02/02/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/676,722

Applicant(s)

WILSON ET AL.

Examiner

Laura A Grier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11/19/13.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-14 and 24-34 is/are allowed.
- 6) ☒ Claim(s) 1,3-7,15,16 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 2 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### DETAILED ACTION

#### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1, 3-, 7, 22, and 23** are rejected under 35 U.S.C. 102(e) as being anticipated by Taenzer et al., U. S. Patent No. 6009183.

Regarding **claim 1**, Taenzer discloses a sound delivery tube system. Taenzer's disclosure comprises a sound delivery system body (12), which reads on a housing; a microphone (26), which reads on a receiver; a sound delivery tube (14) with an ear tip, (16), which reads on the flexible ear tip and a rigid tube nipple, and a flexible channel, and inherently discloses a flexible channel as evident by the fact of a sound transmission tube, therein (figures 1 and 2, col. 2, lines 51-61, col. 3, lines 1-22, and col. 4, lines 20-42). In figures 1 and 2, Taenzer the sound delivery body (housing) discloses the housing and tube for an obtuse angle, and thus hangs vertical to the ear of the user (see the attached drawings), and further, Taenzer discloses the ear tip of the sound delivery device, which constitutes as the insert earphone portion of the device being inserted in the ear canal of the user and thus supported by the ear canal when worn by the user (col. 4, lines 30-33).

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Regarding **claim 3 and 7**, Taenzer discloses everything claimed as applied above (see claim 3). Taenzer further discloses the transmission tube (flexible channel) with a first end and second end (col. 3, lines 13-15).

Regarding **claim 4**, Taenzer discloses everything claimed as applied above (see claim 1). The ear tip may be comprised of various resilient materials, thus inherently discloses a foam ear tip portion.

Regarding **claim 5**, Taenzer discloses everything claimed as applied above (see claim 4). Figure 2 discloses the tube nipple couple to the ear tip.

Regarding **claim 22**, Taenzer et al. (herein, Taenzer) discloses a sound delivery tube system. Taenzer's disclosure comprises a sound delivery system body (12), which reads on a housing; a microphone (26), which reads on a receiver; a sound delivery tube (14) with an ear tip, wherein, the ear tip may be comprised of various resilient materials, thus inherently discloses a foam ear tip portion (16), which reads on the flexible ear tip and a rigid tube nipple, and a flexible channel, and inherently discloses a flexible channel as evident by the fact of a sound transmission tube, therein (figures 1 and 2, col. 2, lines 51-61, col. 3, lines 1-22, and col. 4, lines 20-42), and further Taenzer discloses the ear tip of the sound delivery device, which constitutes as the insert earphone portion of the device being inserted in the ear canal of the user and thus supported by the ear canal when worn by the user (col. 4, lines 30-33).

Regarding **claim 23**, Taenzer discloses everything claimed as applied above (see claim 22). Taenzer further discloses the transmission tube (flexible channel) with a first end and second end (col. 3, lines 13-15).

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3. **Claims 15, 20 and 21** are rejected under 35 U.S.C. 102(e) as being anticipated by Lux-Wellenhof, U. S. Patent No., 6671381.

Regarding **claim 15**, Lux-Wallenhof discloses a hearing aid (figure 8). Lux-Wallenhof's disclosure comprises an auditory channel unit that consists of a hearing aid module (20), which reads on a housing (col. 7, lines 16-18); a microphone (col. 7, lines 58-59) which is coupled to a storage device of producing the sound (col. 10, lines 66-67 col. 11, lines 1-3, and col. 12, lines 1-3), which reads on a receiver; a rubber grid (27) coupled, therein to the conical rubber surroundings of the housing structure provides support of a flexible ear tip, wherein, rubber is a soft material; a auditory channel (22) reads a tube nipple having first (24) and second end (25) which is located externally to the housing, wherein externally may be defined as "of, or relating to the outside or outer surface" and "a nipple may be simply defined as passage way in which a substance may pass"; first end is coupled proximate to a moisture strip of the auditory channel (col. 7, lines 27-37, which reads on an acoustic damper; and the auditory unit may be worn in the ear of the user and inherently supported by the ear canal as evident by the fact that it is a hearing aid positioned near the eardrum (col. 7, lines 23-25).

Regarding **claims 20 and 21**, Lux-Wallenhof discloses everything claimed as applied above (see claim 15). Lux-Wallenhof inherently discloses microphone (receiver) located between a flexible channel, which supported by the auditory channel being surrounded by a flexible tube sleeve and the first end of the tube nipple (figure 8), therein.

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 6, 15-16, 18-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Taenzer in view Juneau et al., U. S. Patent No, 6476512.

Regarding claim 6, Taenzer discloses everything claimed as applied above (see claim 1). However, Taenzer fails to specifically disclose an acoustic damper located in the tube nipple.

Regarding the acoustic damper, Juneau et al. (herein, Juneau) discloses a hearing aid comprising an acoustic damper (col. 10, lines 60-64).

Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention by providing an acoustic damper in the tube of the earphone device near a receiver for the purpose of smoothing the acoustic response of the receiver.

Regarding **claim 15**, Taenzer discloses a sound delivery tube system. Taenzer's disclosure comprises a sound delivery system body (12), which reads on a housing; a microphone (26), which reads on a receiver; a sound delivery tube (14) with an ear tip (16), which reads on the flexible ear tip and a rigid tube nipple, and a flexible channel, and inherently discloses a flexible channel as evident by the fact of a sound transmission tube, therein (figures 1 and 2, col. 2, lines 51-61, col. 3, lines 1-22, and col. 4, lines 20-42). However, Taenzer fails to specifically disclose an acoustic damper located in the tube nipple.

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Regarding the acoustic damper, Juneau et al. (herein, Juneau) discloses a hearing aid comprising an acoustic damper (col. 10, lines 60-64).

Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention by providing an acoustic damper in the tube of the earphone device near a receiver for the purpose of smoothing the acoustic response of the receiver.

Regarding **claim 16**, Taenzer discloses everything claimed as applied above (see claim 15). In figures 1 and 2, Taenzer the sound delivery body (housing) discloses the housing and tube for an obtuse angle, and thus hangs vertical to the ear of the user (see the attached drawings)

Regarding **claim 18**, Taenzer discloses everything claimed as applied above (see claim 15). The ear tip may be comprised of various resilient materials, thus inherently discloses a foam ear tip portion. Figure 2 discloses the tube nipple coupled to the ear tip.

Regarding **claims 19-21**, Taenzer discloses everything claimed as applied above (see claim 15). Taenzer further discloses the transmission tube (flexible channel) with a first end and second end (col. 3, lines 13-15).

***Allowable Subject Matter***

6. **Claims 8-14, and 24-30** are allowed.
7. **Claims 2 and 17** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

8. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

The applicant essentially argues that prior art of record fails to disclose the claimed invention in respect to amended claim language. The Taenzer is maintained in respect the claim language provided, wherein the housing, receiver, flexible tip ear tip, tube nipple, and the insert earphone being inserted partially into the ear canal, wherein the ear canal supports the earphone entirely as indicated in the office action as explained by the fact that device of Taenzer may be supported by and inserted into the user's ear. The specification does explicitly imply that the earphone is solely supported by the ear canal as claimed. In respect to the applicant's remarks about the acoustic damper, a reference has been provided to modify the Taenzer reference in support of the dependent claims with sighted motivation, and for the claim 15, another new reference provided to support the claim language as interpreted to the broadest extent. The Schiess reference has been removed.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after



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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**Or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

LAG  
January 23, 2004

*Laura A Grier*

*Forester W. Isen*  
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